

Clips used with Joseph Favia

September 20, 2006  
JURY TRIAL - DAY SEVEN

PG. 90 (Favia 12/04 @ PG. 294)

10 Q Sure. You mentioned, a few minutes ago I  
11 think, that, in certain circumstances, some Mack  
12 dealers compete against McNeilus for the sale of  
13 trucks to end users, right?  
15 THE WITNESS: well, all -- all  
16 Mack dealers compete against them.

PG. 90 (Favia 12/04 @ PG. 283)

13 Q And -- and the whole premise of this  
14 statement is because you know that Mack dealers  
15 compete with McNeilus to sell to those customers,  
16 right?  
17 A They're working on the same customers.  
18 Q And that's a yes?  
19 A Yes.

PG. 107 (Favia 12/04 @ PG. 174)

17 Q And what he says is, Bob as per phone  
18 conversation yesterday, attached file indicates  
19 the pricing we are prepared to present to McNeilus  
20 for 2000 model -- 2005 model year units, right?  
21 A Yes.

PG. 108 (Favia 12/04 @ PG. 106)

06 Q Sir, you didn't negotiate the 2004  
07 pricing with McNeilus?  
08 A I was there. I was involved in it.  
09 Q And you remember, don't you, that one of  
10 -- developing that price, Mack built in a profit  
11 for the dealer component, right?  
13 THE WITNESS: Yes.

PG. 112 (Favia 11/03 @ PG. 32)

19 Putting to the side these  
20 letters, have there been any agreements, to your  
21 knowledge, that Mack has entered into with any of  
22 the body builders regarding who they can sell to?  
23 A. Repeat that again, I'm sorry.  
24 MR. MACK: Sure.  
00033:01 Could you please read that  
02 back?  
03 (WHEREUPON, the record was  
04 read by the reporter.)  
05 MR. ROSSMAN: Is it a broader question  
06 than, Wayne, where you are asking if he is aware  
07 of any restrictions that Mack has put on the body  
08 builders, as to who they can sell to?  
09 MR. MACK: Yes.  
10 MR. ROSSMAN: Over and above letters that  
11 he wrote?  
12 MR. MACK: Yes.  
13 MR. ROSSMAN: Do you understand that?

14 THE WITNESS: I am trying to define the  
15 question in my head. I don't know of any letters  
16 Mack is putting restrictions on.

17 Can I back up?

18 MR. MACK: Yes.

19 BY THE WITNESS:

20 A. I did write a letter about  
21 third-party distribution of trucks.

22 BY MR. MACK:

23 Q. Was that -- we will get to that  
24 letter later, but is that the only letter that  
00034:01 you recall on this subject?

02 A. Yes.

03 Q. And who did you send that to?

04 A. I believe I sent it to Tim Trom.

05 Q. At McNeilus?

06 A. At McNeilus.

07 Q. And you have answered my question  
08 with reference to letters.

09 Other than letters, are there  
10 any verbal agreements, to your knowledge, between  
11 Mack, relating to who the body builders can sell  
12 to -- restriction of who the body builders can  
13 sell to?

14 A. Not that I know of.

15 Q. Is there an agreement between  
16 Mack -- that letter that you sent out to  
17 Mr. Trom, was that confirming an agreement  
18 between Mack and McNeilus on this third-party  
19 distribution?

20 A. I don't know.

21 Q. Well, did you talk to Mr. Trom about  
22 it before you sent him the letter?

23 A. I believe I did.

24 Q. And what did you tell Mr. Trom?  
00035:01 A. That we will not sell trucks for

02 third-party distribution.

03 Q. And did that -- what did you mean by  
04 third-party distribution?

05 A. Independent truck dealers.

06 Q. Was that the first conversation that  
07 you had with Mr. Trom about that subject?

08 A. I believe so.

09 Q. And did Mr. Trom agree with you in  
10 that conversation, to that restriction?

11 A. Yes.

12 Q. And then you sent the letter to him  
13 after that?

14 A. I am trying to recall if I sent the  
15 letter first. I might have done that.

16 Q. Regardless of whether the letter was  
17 first or after, you did have a discussion with  
18 Mr. Trom, where they agreed to that restriction;  
19 correct?

20 A. Correct.

21 Q. And was that -- do you recall what  
22 year that was in?

23 A. 2002.

24 Q. Is that agreement still in place  
00036:01 today?

02 A. Yes.

03 Q. Do you have a similar agreement with  
04 Heil or McClain?

05 A. Yes.  
06 Q. Who did you speak with at Heil about  
07 this issue?  
08 A. I don't recall.  
09 Q. Did you send Heil a letter?  
10 A. I don't believe so.  
11 Q. Was it also in 2002?  
12 A. No.  
13 Q. When did that happen?  
14 A. It has been in place since I have  
15 taken over, and I refreshed their memories.  
16 Q. So the agreement with Heil goes back  
17 to before September of 1998?  
18 A. I believe so.  
19 Q. And when did you refresh their  
20 memories about this?  
21 A. I don't recall.  
22 Q. Does the agreement with McNeilus go  
23 back to before September of 1998, too?  
24 A. I believe so.  
00037:01 Q. So you were just refreshing  
02 Mr. Trom's memory about this in 2002?  
03 A. I think there was an incident where  
04 there was an ad.  
05 Q. And how did you learn -- well, let  
06 me finish the Trinity here.  
07 McClain, is there a similar  
08 agreement with McClain?  
09 A. Yes.  
10 Q. And does that go back to before  
11 September of 1998, as well?  
12 A. Yes.  
13 Q. Have you had to refresh their memory  
14 about it?  
15 A. Not that I recall.  
16 Q. Have you had any conversations with  
17 McClain about that at any time?  
18 A. No.  
19 Q. Who at Mack told you there was such  
20 an agreement with Heil, McClain or McNeilus?  
21 A. I am not really sure.  
22 Q. Well, when the issue came up with  
23 Mr. Trom, did you speak to anybody about it?  
24 A. From Mack?  
00038:01 Q. Yes.  
02 A. Kevin Flaherty.  
03 Q. Did Mr. Flaherty say to you that  
04 there had been a prior agreement with McNeilus  
05 not to sell to third-party distributors?  
06 A. I think he told me that we don't --  
07 they know they don't sell to third-party  
08 distributors -- no third-party distributorships. =